

## **COLORADO NO-CALL LIST ACT**

**6-1-901. Short title.** This part 9 shall be known and may be cited as the "Colorado No-Call List Act."

**6-1-902. Legislative declaration.** (1) The general assembly hereby finds, determines, and declares that:

- (a) The use of the telephone and telefacsimile ("fax") to market goods and services is widespread;
- (b) Many citizens of this state view telemarketing as an invasion of privacy;
- (c) Individuals' privacy rights and commercial freedom of speech should be balanced in a way that accommodates both the privacy of individuals and legitimate telemarketing practices;
- (d) Although charitable and political organizations are exempt from the provisions of this part 9 because of considerations of freedom of speech, the general assembly encourages such organizations to voluntarily comply with this part 9 when possible; and
- (e) It is in the public interest to establish a mechanism under which the individual citizens of this state can decide whether or not to receive telephone solicitations by phone or fax.

**6-1-903. Definitions.** As used in this part 9, unless the context otherwise requires:

- (1) "Caller identification service" means a type of telephone service that permits telephone subscribers to see the telephone number of incoming telephone calls.
- (2) "Colorado no-call list" means the database of Colorado residential subscribers and wireless telephone service subscribers that have given notice, in accordance with rules promulgated under section 6-1-905, of such subscribers' objection to receiving telephone solicitations.
- (3) "Conforming consolidated no-call list" means any database that includes telephone numbers of telephone subscribers that do not wish to receive telephone solicitations, if such database has been updated within the prior thirty days to include all of the telephone numbers on the Colorado no-call list.
- (4) "Conforming list broker" means any person or entity that provides lists for the purpose of telephone solicitation, if such lists shall have removed, at a minimum of every thirty days, any phone numbers that are included on the Colorado no-call list.
- (5) "Designated agent" means the party with which the public utilities commission contracts under section 6-1-905 (2).
- (6) "Electronic mail" means an electronic message that is transmitted between two or more computers or electronic terminals. "Electronic mail" includes electronic messages that are transmitted within or between computer networks.
- (7) (a) "Established business relationship" means a relationship that:
  - (I) Was formed, prior to the telephone solicitation, through a voluntary, two-way communication between a seller or telephone solicitor and a residential subscriber or wireless telephone service subscriber, with or without consideration, on the basis of an application, purchase, ongoing contractual agreement, or commercial transaction between the parties regarding products or services offered by such seller or telephone solicitor; and
  - (II) Has not been previously terminated by either party; and

(III) Currently exists or has existed within the immediately preceding eighteen months.

(b) "Established business relationship", with respect to a financial institution or affiliate, as those terms are defined in section 527 of the federal "Gramm-Leach-Bliley Act", includes any situation in which a financial institution or affiliate makes solicitation calls related to other financial services offered, if the financial institution or affiliate is subject to the requirements regarding privacy of Title V of the federal "Gramm-Leach-Bliley Act", and the financial institution or affiliate regularly conducts business in Colorado.

(8) "Internet" means the international computer network consisting of federal and nonfederal, interoperable, packet-controlled switched data networks.

(9) "Residential subscriber" means a person who has subscribed to residential telephone service with a local exchange provider, as defined in section 40-15-102 (18), C.R.S. "Person" also includes any other persons living or residing with such person.

(10) (a) "Telephone solicitation" means any voice, telefacsimile, graphic imaging, or data communication, including text messaging communication over a telephone line or through a wireless telephone for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or services.

(b) Notwithstanding paragraph (a) of this subsection (10), "telephone solicitation" does not include communications:

(I) To any residential subscriber or wireless telephone service subscriber with the subscriber's prior express invitation or permission;

(II) By or on behalf of any person or entity with whom a residential subscriber or wireless telephone service subscriber has an established business relationship;

(III) For thirty days after a residential subscriber or wireless telephone service subscriber has contacted a business to inquire about the potential purchase of goods or services or until the subscriber requests that no further calls be made, whichever occurs first;

(IV) By or on behalf of a charitable organization that is required to and that has complied with the notice and reporting requirements of section 6-16-104 or is excluded from such notice and reporting requirements by 6-16-104 (6);

(V) Made for the sole purpose of urging support for or opposition to a political candidate or ballot issue; or

(VI) Made for the sole purpose of conducting political polls or soliciting the expression of opinions, ideas, or votes.

(c) "Telephone solicitation" includes any communication described in paragraph (a) of this subsection (10), whether such communication originates from a live operator, through the use of automatic dialing and recorded message equipment, or by other means.

(11) "Wireless telephone" means a telephone that operates without a physical, wireline connection to the provider's equipment. The term includes, without limitation, cellular and mobile telephones.

(12) "Wireless telephone service subscriber" means a person who has subscribed to a telephone service that does not employ a wireline telephone or that employs both wireline and wireless telephones on the same customer account.

**6-1-904. Unlawful to make telephone solicitations to subscribers on the Colorado no-call list -- requirements for telephone solicitations generally.** (1) (a) No person or entity shall make or cause to be made any telephone solicitation to the telephone of any residential

subscriber or wireless telephone service subscriber in this state who has added his or her telephone number and zip code to the Colorado no-call list in accordance with rules promulgated under section 6-1-905.

(b) Any person or entity that makes a telephone solicitation to the telephone of any residential subscriber or wireless telephone service subscriber in this state shall register in accordance with the provisions of section 6-1-905 (3) (b) (II).

**(2) (Repealed)**

(3) No person or entity that makes a telephone solicitation to the telephone of a residential subscriber or a wireless telephone service subscriber in this state shall knowingly utilize any method to block or otherwise circumvent such subscriber's use of a caller identification service when that person or entity's service or equipment is capable of allowing the display of the number.

(4) Persons or entities desiring to make telephone solicitations shall update their copies of the Colorado no-call list, conforming consolidated no-call list, or a list obtained from a conforming list broker within thirty days after the beginning of every calendar quarter, on or after July 1, 2002, or upon the initial availability and accessibility of the Colorado no-call list, whichever is earlier.

**6-1-905. Establishment and operation of a Colorado no-call list.** (1) The Colorado no-call list program is hereby created for the purpose of establishing a database to use when verifying residential subscribers and wireless telephone service subscribers in this state who have given notice, in accordance with rules promulgated under paragraph (b) of subsection (3) of this section, of such subscribers' objection to receiving telephone solicitations. The program shall be administered by the public utilities commission.

(2) Not later than January 1, 2002, the public utilities commission shall contract with a designated agent, which shall maintain the web site and database containing the Colorado no-call list. If no more than one entity bids on the contract, the public utilities commission may award, at its discretion, such contract.

(3)(a) Not later than July 1, 2002, the designated agent, using the designated state internet web site, shall develop and maintain the Colorado no-call list database with information provided by residential subscribers and, as soon as practicable after March 25, 2003, shall include information provided by wireless telephone service subscribers.

(b) The public utilities commission shall establish, by rule, guidelines for the designated agent for the development and maintenance of the Colorado no-call list so that the no-call list can easily be accessed by persons or entities desiring to make telephone solicitations, and by state and local law enforcement agencies. As soon as practicable after March 25, 2003, the public utilities commission shall promulgate rules that:

(I) Specify that there shall be no cost for a residential subscriber or wireless telephone service subscriber to provide notification to the designated agent that such subscriber objects to receiving telephone solicitations;

(II) Specify that there shall be an annual registration fee of not more than five hundred dollars for persons or entities that wish to make telephone solicitations or otherwise access the database of telephone numbers and zip codes contained in the Colorado no-call list database. The public utilities commission shall determine such fee on a sliding scale so that persons or entities with fewer than five employees shall pay no fee. In addition, there shall be

no fee charged to conforming list brokers or nonprofit corporations, as defined in section 7-121-401 (26), C.R.S. The maximum fee shall be charged only to persons or entities with more than one thousand employees. Moneys collected from such fees shall cover the direct and indirect costs related to the creation and operation of the Colorado no-call list. Moneys from such fees shall be collected by and paid directly to the designated agent. The public utilities commission shall have the authority to annually adjust the fees below the stated maximum based on revenue history of the fees received by the designated agent. The designated agent shall provide means for on-line registration and credit card payment of fees charged pursuant to this subparagraph (II). Each such person or entity shall provide a current business name, business address, email address if available, and telephone number when initially registering for the no-call list. This information shall be updated when changes occur.

(III) Specify that the method by which each residential subscriber and wireless telephone service subscriber may give notice to the designated agent of his or her objection to receiving such solicitations, or may revoke such notice, shall be exclusively by entering the area code, phone number, and zip code of the subscriber directly into the database via the designated state internet web site or by using a touch-tone phone to enter the area code, phone number, and zip code of the subscriber via a designated statewide, toll-free telephone number maintained by the designated agent as a part of the Colorado no-call list;

(IV) Specify that the date of every notice received in accordance with subparagraph (III) of this paragraph (b) be recorded and included as part of the information in the no-call list;

(V) Require the designated agent to provide updated information about the Colorado no-call list program on the designated state web site, subject to supervision by the public utilities commission;

(VI) Prohibit the designated agent or any person or entity collecting information to be transmitted to the designated agent from making any use or distribution of subscriber information contained in the no-call list except as expressly authorized under this part 9;

(VII) Specify the methods by which additions, deletions, changes, and modifications shall be made to the Colorado no-call list database and how updates of the database shall be made available to persons or entities desiring such updates. Such methods shall include provisions to remove from the Colorado no-call list, on at least an annual basis, any telephone number that has been disconnected or reassigned.

(VIII) Require the designated agent to maintain an automated, on-line complaint system for residential subscribers and wireless telephone service subscribers to report suspected violations over the internet web site. The automated, on-line complaint system shall have the capability to collect, sort, and report suspected violations to the appropriate state enforcement agency electronically for enforcement purposes.

(IX) Specify that the no-call list shall be available on line at the Colorado no-call list web site to a person or entity desiring to make telephone solicitations if the person or entity has registered in accordance with the provisions of subparagraph (II) of this paragraph (b). The list shall be available in a text or other compatible format, at the discretion of the public utilities commission, but shall allow telephone solicitors to select and sort by specific zip codes and telephone area codes. Telephone solicitors and conforming list brokers shall not receive additional compensation for distributing the Colorado no-call list, but are encouraged to freely distribute the Colorado no-call list at no cost.

(X) Specify such other matters relating to the database as the public utilities commission deems necessary or desirable.

(c) If the federal government establishes one or more official databases of residential or wireless telephone service subscribers who object to receiving telephone solicitations, the designated agent is authorized to provide appropriate data from the official Colorado no-call list exclusively for inclusion in an official, national do-not-call database. To the extent allowed by federal law, the designated agent shall ensure that the Colorado no-call list includes that portion of an official national do-not-call database that relates to Colorado.

(4) The state shall not be liable to any person for gathering, managing, or using information in the Colorado no-call list database pursuant to this part 9 and for enforcing the provisions of this part 9.

(5) The designated agent shall not be liable to any person for performing its duties under this part 9 unless, and only to the extent that, the designated agent commits a willful and wanton act or omission.

(6) As soon as practicable after March 25, 2003, the designated agent shall update the database, on an ongoing basis, with information provided by residential subscribers, wireless telephone service subscribers, and local exchange providers.

(7) No person shall place the telephone number of another person on the Colorado no-call list without the authorization of the person to whom the number is assigned.

(8) Repealed.

**6-1-906. Enforcement -- penalties -- defenses.** (1) On and after July 1, 2002, violation of any provision of this part 9 constitutes a deceptive trade practice under the provisions of section 6-1-105 (1) and may be enforced under sections 6-1-110, 6-1-112, and 6-1-113. No state enforcement action under this part 9 may be brought against a person or entity for fewer than three violations per month.

(2) Notwithstanding subsection (1) of this section, it shall not be a violation of this part 9 if:

(a) The person or entity has otherwise fully complied with the provisions of this part 9 and has established and implemented, prior to the violation, written practices and procedures to effectively prevent telephone solicitations in violation of this part 9; or

(b) The violation resulted from an error in transcription or other technical defect, not the fault of the person or entity, that caused the information in the no-call list as received by the person or entity to differ from the information that was or should have been included in the no-call list as transmitted by the designated agent.

(3) The remedies, duties, prohibitions, and penalties of this section are not exclusive and are in addition to all other causes of action, remedies, and penalties provided by law.

(4) No provider of telephone caller identification service shall be held liable for violations of this part 9 committed by other persons or entities.

**6-1-907. Acceptance of gifts, grants, and donations.** The public utilities commission may accept and expend moneys from gifts, grants, and donations for purposes of administering the provisions of this part 9.

**6-1-908. Severability.** If any provision of this part 9 or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or

applications of this part 9 which can be given effect without the invalid provision or application, and to this end the provisions of this part 9 are declared to be severable.